

# Hastings International and Comparative Law Review

---

Volume 9  
Number 2 *Winter 1986*

Article 3

---

1-1-1986

## The Light at the End of the Tunnel: The Hague Convention on International Child Abduction has Reached Capitol Hill

Lawrence H. Stotter

Follow this and additional works at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/hastings_international_comparative_law_review)



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Lawrence H. Stotter, *The Light at the End of the Tunnel: The Hague Convention on International Child Abduction has Reached Capitol Hill*, 9 HASTINGS INT'L & COMP. L. Rev. 285 (1986).

Available at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol9/iss2/3](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol9/iss2/3)

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings International and Comparative Law Review by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

# The Light at the End of the Tunnel: The Hague Convention on International Child Abduction Has Reached Capitol Hill

By LAWRENCE H. STOTTER

## I. INTRODUCTION

On October 30, 1985, President Ronald Reagan formally transmitted a certified copy of the Hague Convention on the Civil Aspects of International Child Abduction<sup>1</sup> to the United States Senate to receive its advice and consent to ratification.<sup>2</sup> On November 5, 1985, the Convention was read for the first time, and, together with accompanying papers, was referred to the Senate Committee on Foreign Relations (SFRC). On October 9, 1986, the Senate in regular session formally conferred its "advice and consent," leaving the enactment of enabling legislation as the only remaining step to its full ratification by the United States. It is hoped that this last step will be taken in early 1987 by the 100th Congress.<sup>3</sup> In his letter of transmittal to the Senate, President Reagan expressed the following sentiments regarding the Convention:

---

1. Hague Conference on Private International Law, Final Act of the Fourteenth Session, October 25, 1980. 51 Fed. Reg. 10498 (1980) [hereinafter Child Abduction Convention]. See *infra* Appendix A for full text of the Convention; the Convention also is reprinted in 15 FAM. L.Q. 149 (1981).

2. S. Doc. No. 11, 99th Cong., 1st Sess. — (1980).

3. The Committee is currently under the chairmanship of Senator Richard G. Lugar (Indiana). Richard Messick, Esq., is General Counsel to the Committee. A public hearing on the Child Abduction Convention before the Committee was held on June 11, 1986, in Room SD-423, Dirksen Senate Office Building in Washington, D.C. At this hearing the Committee, chaired by Senator Mathias, also was asked to give its advice and consent to approval of the following four other international conventions: the Vienna Convention on the Law of Treaties; the United Nations Convention on Contracts for the International Sale of Goods; the Inter-American Convention on Letters Rogatory, with Protocol; and the Inter-American Convention on International Commercial Arbitration. At the hearing a prepared statement requesting approval of all five Conventions was submitted to the Committee by the American Bar Association (ABA). See Statement of Arthur W. Rovine, Chairman, Section of International Law and Practice, American Bar Association (Jun. 11, 1986). In addition a number of experts made oral presentations as to the particulars of each of the individual Conventions. The Committee, which met September 9, 1986, decided to report favorably to the Senate on the Hague Child Abduction Convention.

The Convention would represent an important addition to the State and Federal laws currently in effect in the United States that are designed to combat parental kidnapping — specifically, the Uniform Child Custody Jurisdiction Act now in effect in every state in the country, the Parental Kidnapping Prevention Act of 1980, the 1982 Missing Children Act and the Missing Children's Assistance Act. It would significantly improve the chances a parent in the United States has of recovering a child from a foreign Contracting State. It also provides a clear-cut method for parents abroad to apply for the return of children who have been wrongfully taken to or retained in this country. In short, by establishing a legal right and streamlined procedures for the prompt return of internationally abducted children, the Convention should remove many of the uncertainties and the legal difficulties that now confront parents in international child abduction cases.<sup>4</sup>

Both the President and the Secretary of State had recommended that the Senate give early and favorable consideration to the Convention and accord its advice and consent to ratification.

The Convention has received widespread legal support. The Secretary of State's Advisory Committee on Private International Law, which represents ten major national legal organizations interested in international efforts to unify private law, has endorsed the Convention. The House of Delegates of the American Bar Association adopted a resolution in February 1981, urging the United States to sign and ratify the Convention. The Department of Justice and the Department of Health and Human Services also support ratification.<sup>5</sup>

Public opinion appears almost unanimous that governments of the world must crack down on people who abduct children, including parents in custody battles. To date, forty-five states have adopted legislation which provides that child abduction may be a felony and may subject the abductor to severe criminal sanctions.<sup>6</sup>

President Reagan's appearance on national television, to introduce a roll call of some of the many children reported missing, highlighted the concern over missing children. The depiction of the faces of missing children on television and on the sides of trucks, buses, and even milk cartons also has underscored this concern. The efforts of representatives of the Federal Bureau of Investigation, the Office of Domestic Violence in the Department of Health and Human Services, and the National Center

---

4. See Letter of Transmittal (Oct. 30, 1985), and Letter of Submittal from Secretary of State George P. Shultz to the President (Oct. 4, 1985). 51 Fed. Reg. 10495-97 (1986).

5. *Id.* at 10497.

6. See S. KATZ, CHILD SNATCHING 155 app. B (1981) (containing a table of criminal statutes and provisions).

for Missing and Exploited Children all attest to the current national concern for, and dedication to, the elimination of this continuing problem at every level.

The almost universal recognition of the importance of ratifying and placing into force the Hague Convention on the Civil Aspects of Child Abduction was expressed by the Lord Chancellor of Great Britain (Lord Hailsham of St. Marylebone). In introducing this Convention before the House of Lords in February 1985, Lord Hailsham said:

Not only within this country but internationally as well, there has been growing concern about the increase in child abduction across frontiers. No doubt some of the reasons for this are unavoidable. They include the increase in the number of broken marriages, and they include improvements in travel facilities, particularly by air. But there are also jurisprudential causes, which can be removed. The courts of each country operate independently of each other, and therefore without assistance from an international convention. A decision as to the custody of a child following the separation of the parents may not be enforced outside the country in which it was given. Moreover, courts in different countries can make divergent custody orders in respect of the same child. A non custodial parent therefore may be tempted to abscond with a child to another jurisdiction in the hope of escaping justice altogether or of receiving more favorable treatment in that jurisdiction.<sup>7</sup>

The statements of President Reagan and the Lord Chancellor demonstrate the high level of recognition of the immediate need to establish international assistance for parents and others having rights of custody to obtain the return of children abducted across international boundaries. While ratification of the Convention would not confer immediate benefits on a parent seeking the return of a child from abroad, it would at least provide an essential preliminary step. Just as the fifty states have, over the past fifteen years, gradually accepted and then enjoyed the reciprocity arising from the Uniform Child Custody Jurisdiction Act (UCCJA),<sup>8</sup> universal ratification of this Convention will achieve

---

7. PARL. DEB., H.L. (5th ser.) 1248 (1985).

8. 9 U.L.A. 111 (1979) (containing annotations for adopting jurisdictions) [hereinafter UCCJA]. The Act has now been enacted by the legislatures in all 50 states. The Act has been adopted by some states without change and by some states with variations in certain sections of the Act. A full description of the Act as adopted by each State with section variations and commentary can be found in 1 Child Custody and Visitation Law and Practice (MB) app. 3A (J. McCahey ed. 1983); A table of adopting jurisdictions with statutory citations is set forth in Appendix B, *infra*. For further discussion of the UCCJA, see Bodenheimer, *The Uniform Child Custody Jurisdiction Act*, 3 FAM. L.Q. 304 (1969), and Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction under the UCCJA*, 14 FAM. L.Q. 203 (1981).

similar ends throughout the world.

## II. THE ROLE OF GOVERNMENT

Child abduction cases are referred for assignment, information, and help to the Office of Citizens Consular Services (CCS) of the United States Department of State's Bureau of Consular Affairs.<sup>9</sup> CCS regularly assists parents in the United States and abroad with child custody problems. CCS uses all of the available tools to provide information and help to the concerned parent. For example, CCS attempts to secure a personal interview of the child. In appropriate circumstances, it urges local authorities to place a child in protective custody, such as when the physical custodian of the child is known to be dangerous or mentally ill.

Under current United States law, requests to the State Department for assistance in transnational child abduction cases are immediately forwarded to the appropriate geographical post of the United States foreign consular service. The consular officers receiving these requests are obligated to take whatever measures are appropriate under the circumstances consistent with the guidelines established by the State Department in its *Foreign Affairs Manual*.<sup>10</sup> The responsibility of such consular officers is expressly limited to providing a welfare/whereabouts search, including an attempt to locate the child and to determine the child's state of health and present circumstances.

Significantly, United States consular officers have no legal authority or duty to obtain custody of the child or return him or her to the requesting parent. As the State Department pointed out in a letter response to an inquiry from U.S. Senator Charles Mathias, Jr.:

A United States court decree granting custody frequently has no effect in a foreign country unless accepted or adopted by a court in that country in a separate civil action. Courts in many countries, if not most, are not likely to accept and enforce a U.S. court decree without hearing the case on its merits. In many countries a non-citizen such as an American citizen parent has little chance of being awarded sole cus-

---

9. Questions on the role of the federal government in the invocation and implementation of the Convention may be addressed to the Office of Citizens Consular Services, Dep't of State, Washington, D.C. 20520 (telephone: (202) 647-3444). Inquiries on the action concerning the Convention taken by other countries may be addressed to the Office of the Assistant Legal Adviser for Treaty Affairs, Dep't of State, Washington, D.C. 20520 (telephone: (202) 647-8135).

10. 1 UNITED STATES DEPARTMENT OF STATE, FOREIGN AFFAIRS MANUAL § 140 [hereinafter FOREIGN AFFAIRS MANUAL].

tody of a child when the other parent is a national of that country.<sup>11</sup>

Even with full recognition of the circumstances described above, it is the established policy of our foreign service that:

a. Consular officers may not assist American citizens to regain physical custody of a child illegally, by force, or by trick;

b. Consular officers may not assist an American citizen parent to leave the country with a child if such departure violates a court order or the laws in effect in that country; and

c. A United States Embassy may not offer refuge to a parent and child in the Embassy or in the residence of any member of the official staff unless there is imminent danger to their lives. Refuge under this exception does not extend to allowing an American citizen parent to remain in the Embassy solely to avoid the enforcement of a court order returning the child to the other parent or to prevent the other parent from taking the child.<sup>12</sup>

Furthermore, the problem of transnational child abducting is increasing. At a recent Washington, D.C. conference, officials of the Consular Affairs Office, released statistics of reported abductions covering the past twelve years. These statistics reveal a dramatic increase in child abduction: fifteen times more cases have been reported in the last five years than in the same span of years ten years earlier.<sup>13</sup> In the five year

11. Letter from J. Brian Atwood, Assistant Secretary for Congressional Relations, U. S. Dept. of State, to U.S. Senator Charles Mathias, Jr. (Feb. 7, 1980).

12. See 2 FOREIGN AFFAIRS MANUAL §§ 227-29; see also Enclosure B to Letter from J. Brian Atwood (Feb. 7, 1980), *supra* note 11.

13.

Region to  
Which Child  
Taken

Years Abduction Reported

	<u>73</u>	<u>74</u>	<u>75</u>	<u>76</u>	<u>77</u>	<u>78</u>	<u>79</u>	<u>80</u>	<u>81</u>	<u>82</u>	<u>83</u>	<u>84</u>	<u>85</u>	<u>Total</u>
Africa	0	0	0	0	2	0	14	12	12	26	24	11	9	110
Inter- America	0	0	1	7	7	15	29	14	53	102	112	81	67	488
E.Asia/ Pacific	0	0	0	0	2	0	3	39	11	5	51	28	54	193
Europe/ Canada	1	0	2	4	53	50	64	75	87	164	139	104	104	847
MidEast	0	0	2	1	3	3	2	15	30	43	61	68	70	298
Total	1	0	5	12	67	68	112	155	193	340	387	292	304	1,936

Table supplied by Monica Gaw, Consular Affairs Officer, Overseas Citizens Services, Department of State, at meeting in Washington, D.C. (Jan. 1986).

period from 1973-1977, 85 cases were reported, compared to 1,516 for the five-year period ending in 1985.

By comparison, reported cases by foreign nationals requesting the return of children from other countries brought into the United States only averaged between fifteen and thirty per year during this same five year period, fewer than ten percent of the total number of United States children taken to foreign lands.

Without effective international mechanisms, deprived parents are left powerless and desperate, frequently driven to expensive and clumsy attempts at self-help. All too frequently, the parents meet with foreign bureaucratic red tape, lack of interest, or even claims of blatant corruption.<sup>14</sup> Adoption of the Child Abduction Convention will enable parents to bypass the confusion of dealing with diplomatic channels, the frustration of overcoming bureaucratic inefficiency and the irritation of complying with legislative technicalities. Instead, parents simply will be able to appear before the local court controlling the physical status of the child.

The ultimate effectiveness of a solution such as the one provided by this Convention will depend on the number of countries which adopt it. The greater its acceptance, the more workable and successful the system will be. As a world leader, the United States should be among the first to demonstrate its faith in a legal means of reducing the growing problems arising from child abduction across national borders.

Since ratification of the Convention into treaty status has been accomplished, the enactment of enabling legislation is the final legislative step needed to complete a multilevel program designed to deter the use of abduction to resolve family disputes over children. For the first time in United States history, a comprehensive scheme of statutory law at the state, federal, and international levels will control and deter child snatching between parents.

### III. HISTORY OF THE CONVENTION

The Child Abduction Convention was adopted on October 24, 1980,<sup>15</sup> at the Fourteenth Session of the Hague Conference on Private International Law in plenary session by a unanimous vote of the twenty-

---

14. See Lynch, *Child Stealing—Abducting Your Own Child Is a Crime But Easy to Get Away With if You Leave the State*, CAL. LAW., Dec. 1983, at 30-32.

15. The Convention was opened for signature on October 25, 1980, at which time it was signed by Canada, France, Greece, and Switzerland. It was signed on behalf of the United States on December 23, 1981. Currently, the Convention is in force for France, Portugal, Switzerland and most parts of Canada.

nine member states.<sup>16</sup>

Recognition of the need for this subject to be controlled by a Convention first arose in 1976, at the conclusion of the Thirteenth Session of the Hague Conference<sup>17</sup> at a meeting of a Special Commission held to consider future work of the Conference. The Canadian expert, Mr. T. Bradbrooke, first suggested the topic, and it sparked much interest. Accordingly, a preliminary study was prepared by Mr. Georges A.L. Droz, the Deputy Secretary-General of the Conference. He reported that the abrupt removal of children from one country to another, in the aftermath of marital breakup, reflected characteristic patterns taking place in all member states. The Special Commission adopted the topic as an official agenda item for the Fourteenth Session, scheduled for 1980.<sup>18</sup> The work product and drafting of the desired Convention was assigned to a Special Commission on "legal kidnapping" established by the Conference.<sup>19</sup> Professor A. E. Anton (United Kingdom) was appointed Chairman.<sup>20</sup>

---

16. The Hague Conference currently has 29 member countries: Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, Egypt, Federal Republic of Germany, Finland, France, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Norway, Netherlands, Portugal, Spain, Sweden, Switzerland, Surinam, Turkey, United Kingdom, United States, Venezuela, and Yugoslavia.

17. In the late nineteenth century, Czar Nicholas II of Russia invited the leading nations of the world to attend a Conference at which the subject of international arbitration was one of the items on the agenda. Twenty-six countries participated in this Conference which was held at The Hague, Netherlands, in 1899, and has gone down in history as the First Hague Peace Conference. A second Peace Conference was held in 1907. The result of these conferences was the establishment of The Permanent Court of Arbitration which serves to arbitrate and settle international disputes. In 1903, the American millionaire Andrew Carnegie donated \$1,500,000 for the construction of a palace to serve as a permanent home of the Court. This was constructed at The Hague, and given the name of the Peace Palace. It was inaugurated in August, 1913. After World War I, the Permanent Court of International Justice was established to preside over international legal disputes. Its permanent home is the Peace Palace, and it originally operated under the auspices of the League of Nations, and subsequently the United Nations. The Peace Palace also maintains an extensive library of international law and the Hague Academy of International Law. The Hague Academy provides lectures on subjects of international public and private law and hosts regular conferences on international law. Of these, the most well known and internationally authoritative is The Hague Conference on Private International Law, which maintains its own permanent bureau and holds its diplomatic assemblies once every four years at the Peace Palace.

18. See 1 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, ACTS AND DOCUMENTS OF THE THIRTEENTH SESSION, OCTOBER 4-23, 1976, 121, 169-172 (1978).

19. The United States Delegation to the Special Commission consisted of B. Bodenheimer, deceased in 1981, former Professor Emeritus, University of California, Davis; J. Hergen, Office of Foreign Litigation, Civil Division, U.S. Dep't of Justice; and L. Stotter, private practice, San Francisco, former Chairman, Section of Family Law, American Bar Ass'n.

20. Professor Anton was a member of the Scottish Law Commission. See Anton, *The Hague Convention on International Child Abduction*, 30 INT'L & COMP. L.Q. 537 (1981).



To assist the Commission's effort to assess the scope of the problem, a questionnaire was submitted to member governments by the Permanent Bureau. Although only a few countries were able to respond with reliable figures, the scale of the problem was acknowledged by many of the responding countries. Consequently, a detailed investigation and report was undertaken and submitted to members of the Special Commission by Mr. Adair Dyer, First Secretary of the Permanent Bureau.<sup>21</sup> Mr. Dyer's investigation and report reviewed the existing laws and activities of international organizations that might affect the subject of "legal kidnapping."<sup>22</sup>

In his review of the sociological background of this problem, Mr. Dyer noted a rapid increase in both the volume and frequency of international abductions. He found these to be the result of the following factors:

(a) great improvements in international transportation and communications—an abductor can put thousands of miles of distance between the child and the parent left behind in only a few hours;

(b) the increasing freedom to cross borders, with fewer visa requirements and a decreasing rigor of passport control;

(c) the growing number of "international" families, i.e., marriages between persons coming from different countries (and even different continents); and

(d) the general trend toward more liberal granting and recognition of divorces.

The Special Commission met on two occasions prior to the Diplomatic Fourteenth Session,<sup>23</sup> during which it produced a draft Convention which the Permanent Bureau distributed to members of the Commission for study and comment.<sup>24</sup> At its two meetings, the members considered

---

21. See the Questionnaire and Report on international child abduction by one parent prepared by M. Adair Dyer, First Secretary of the Permanent Bureau, Preliminary Document No. 1 of August 1978 [hereinafter *Dyer Report*].

22. Apparently, the term "legal" in conjunction with the term "kidnapping" raised considerable confusion and difficulty with various representatives of member states. Accordingly, "abduction" was adopted as a more neutral term.

23. See Child Abduction Convention, *supra* note 1; see also Perez-Vera, *Explanatory Report*, in 3 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, ACTS AND DOCUMENTS OF THE FOURTEENTH SESSION 426-73 (1980). The minutes, discussions, working documents and reports of the Fourteenth Session are available in equally authentic French and English texts, set forth in four volumes. Volume III contains the materials relating to child abduction.

24. The Draft Convention on the civil aspects of the international abduction of children established by the Special Commission in November 1979 was given widespread attention in the United States. It was the subject both of substantial correspondence and personal meetings of the Secretary of State's Advisory Committee on Private International Law as well as the

the factual situations which needed a remedy, the usefulness of early or existing conventions, and the means by which the problems arising out of the international abduction of children could be reduced. The Commission concluded that speedy adoption of a Convention was the only solution to such problems.<sup>25</sup>

The Hague Draft adopted the limited objective of securing the prompt return of abducted children,<sup>26</sup> thereby avoiding the problem of the possible integration of children into new cultural environments. Both the substantive and procedural provisions of the Hague Draft demonstrate the desire of the Special Commission to adopt a unique approach which omits traditional provisions on recognition and enforcement of foreign decisions and judgments and concentrates instead on methods of fostering administrative cooperation of central authorities in each country for the expeditious return of children. The thrust of the Draft was to force the abductor to return the child to his or her traditional place of residence for resolution of the issues in dispute between the parents, providing for only a limited number of exceptions in special cases.<sup>27</sup>

The Convention establishes a system of administrative and legal procedures to bring about the prompt return of children who are wrongfully removed to, or retained in, a Contracting State. Removal or retention of a child is "wrongful," within the meaning of the Convention, if it violates custody rights that have been created by agreement or court order, or that arise by operation of law. The parent, however, still must be exercising his custody rights; the Convention does not apply when custody has been abandoned.<sup>28</sup>

The Convention applies to abductions that occur both before and after issuance of custody decrees, as well as abductions by a joint custo-

---

Study Group on International Child Abduction established by the State Department to advise the United States Delegation to the Hague Conference.

25. See Conclusions drawn from the discussions of the Special Commission of March 1979 on Legal Kidnapping in Preliminary Document No. 5 of June 1979; see also Bodenheimer, *The International Kidnapping of Children: the United States Approach*, 11 FAM. L.Q. 83 (1977).

26. See Anton, *supra* note 20, at 542.

27. The work of the Special Commission involved sixteen plenary sessions at its second meeting in November 1979, in addition to meetings of a drafting committee, and certain ad hoc committees. A detailed explanation of the debates and consensus of the delegates to the Special Commission was the subject of a lengthy report by the Special Commission's reporter, Ms. Elisa Perez-Vera, Professor at the National University of Education, Madrid, Spain. Perez-Vera, *Report of the Special Commission*, 1979 SPECIAL COMM'N ON LEGAL KIDNAPPING [hereinafter *Special Commission Report*].

28. *Id.* art. 3(b).

dian.<sup>29</sup> Thus, a custody decree is not a prerequisite to invoking the Convention's protections. By promptly restoring the status quo ante, the Convention seeks to deny the abductor any possible legal advantage he or she might have in the country to which the child has been taken. The courts of each member country are under a treaty obligation to return the child without conducting legal proceedings on the merits of the underlying custody claims. Each country must establish a "central authority" to process incoming and outgoing requests for assistance in securing the return of a child or the exercise of visitation rights.<sup>30</sup>

As the Special Commission reporter ably points out in her *Explanatory Report*, this Convention departs from the goals and procedures normally followed in former family law conventions. Thus, it is helpful to approach the Convention on International Child Abduction from a negative viewpoint, i.e., what it does *not* purport to accomplish. Thus, the Convention is *not* concerned with the law applicable to the custody of children; it does *not* attempt to deal with the various aspects of international child abduction which may be governed by criminal legislation; it does *not* relate to the laws of extradition; it is *not* concerned with the law applicable to the recognition and enforcement of decisions on custody; and finally, it is *not* an attempt to establish a "universalist" convention under international law, granting broad "human rights." Rather, it is designed to apply and regulate activities only between two or more Contracting States. It must also be recognized that it was the decision of the Special Commission that this be an independent Convention, and not a protocol to the Hague Convention of October 5, 1961.<sup>31</sup>

In the past, the attention given to proposed Conventions by United States experts and family law authorities has been searching and authoritative, with a goal of balancing the resolution of critical family law problems with the national concerns in protecting the variations in family law between the States.<sup>32</sup> It is thus especially noteworthy that there is

---

29. *Id.* art. 3.

30. *Id.* art. 6.

31. *Adopted* October 5, 1961, 658 U.N.T.S. 143 (entered into force with respect to the U.S. Feb. 4, 1969). The Hague Convention deals with the powers of authorities and the law applicable to the protection of minors.

32. See Von Mehren & Nadelmann, 5 FAM. L.Q. 303 (1971) (concerning the 1970 Convention on Recognition of Foreign Divorce Decrees); Paper presented during the Third Sokol Colloquium in April, 1979, by Professor Willis Reese, Director of the Parker School of Foreign and Comparative Law at Columbia Univ. (concerning the 1976 Convention on Celebration and Recognition of Marriages); see also R. LILICH, *THE FAMILY IN INTERNATIONAL LAW: SOME EMERGING PROBLEMS* (1981); Hergen, *How to Practice Family Law in Europe When You're Not European*, 3 FAM. ADVOC. 24 (1981). All of the conventions established through the Hague Conference on Private International Law are set forth in full text in PERMANENT

currently such widespread approval of this recent Hague Convention.

The Convention is made up of six chapters containing forty-five articles. To assist the Senate with its advice and consent to ratification, as well as to provide a convenient interpretation of the Convention for parents, lawyers and public and private agency personnel, the Department of State commissioned the preparation of a legal analysis of the Convention by Patricia M. Hoff. Ms. Hoff's analysis was published in the *Federal Register*<sup>33</sup> to assure widespread dissemination of its content while the Convention is before Congress. In her analysis, Ms. Hoff discusses the children protected by the Convention, the conduct actionable under the convention, the judicial proceedings for return of the child, the central authority, the access rights, and the miscellaneous and final clauses. The analysis also contains a bibliography and a guide to the terminology used in the legal analysis.

A review of the provisions of the Convention suggests the objectives which its drafters attempted to accomplish. The Convention only applies to international situations involving children who were "habitual residents"<sup>34</sup> in a Contracting State immediately prior to any breach of custody or visitation rights. The Convention operates upon the premise that the resolution of custody and visitation rights on the merits is best achieved when left to the courts of the child's habitual residence. The Convention adopts an express statutory policy favoring the "prompt" return of children by means of expeditious proceedings. It announces to potential abductors that removal to another Contracting State would not improve their claims to the custody of, or visitation with, their children. Abduction would most likely result in a loss of funds and an emotional waste for the parties, as well as the children involved.

In addition to these basic provisions, the Convention has several other salient features:

(1) The Convention ceases to apply at such time as a child reaches 16 years of age.<sup>35</sup>

(2) The Convention requires each Contracting State to designate a "Central Authority" for the purpose of taking the necessary administra-

---

BUREAU, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, COLLECTION OF CONVENTIONS (1951-1980) [hereinafter COLLECTION OF CONVENTIONS].

33. 51 Fed. Reg. 10494-10516 (1986).

34. As discussed by the Convention reporter, the "habitual residence" of a child is the country where the child had established meaningful contacts prior to a removal to a new country. See *Special Commission Report*, *supra* note 27. This terminology, in most applications, will be the same as domicile in a choice of law application.

35. Child Abduction Convention, *supra* note 1, art. 4.

tive steps to carry out the provisions of the Convention.<sup>36</sup> The Central Authority is mandated to proceed either directly or through other agencies, public or private, to discover the whereabouts of the child, to secure his or her interim protection, and, where possible, to arrange the voluntary return of the child. If necessary, the Central Authority is required to institute and conduct legal proceedings.<sup>37</sup>

(3) Where a child has been wrongfully removed or retained within the provisions of the Convention, and less than one year has elapsed from the date of the wrongful removal or retention, the court, subject to limited exceptions, is required to order the return of the child forthwith.<sup>38</sup> The exceptions are:

(a) The person having care of the child prior to the abduction was not exercising rights of custody or had consented to the child's removal or retention;<sup>39</sup>

(b) The child objects to being returned and has attained an age at which it is appropriate to consider his or her views;<sup>40</sup>

(c) There is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise would place the child in an intolerable situation;<sup>41</sup>

(d) An application for the return of the child may be refused if the enforcement of a custody decision would "not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."<sup>42</sup>

(4) The Convention does not require persons seeking to rely upon its provisions to depend solely upon the assistance of Central Authorities of the Contracting States to secure the return of the abducted child. Persons whose rights have been breached may apply directly to the courts of a Contracting State by means of private counsel or on their own behalf.<sup>43</sup>

(5) The Convention specifically provides that court decrees requiring the return of a child to the place of his or her former habitual residence will not influence the determination of the merits of the custody issue.<sup>44</sup>

---

36. *Id.* art. 6.

37. *Id.* art. 7.

38. *Id.* art. 12.

39. *Id.* art. 13.

40. *Id.*

41. *Id.*

42. *Id.* art. 20.

43. *Id.* art. 29.

44. *Id.* art. 19.

A few examples illustrate the manner in which the Convention will be expected to operate.

(1) The Convention cannot be invoked to secure the return of a child abducted to California from his home in New York. Even if one of the child's parents is an American citizen and the other is a foreign national, the Convention would not apply to this situation. The UCCJA and the Parental Kidnapping Prevention Act of 1980 (PKPA),<sup>45</sup> as well as domestic state and federal law govern interstate abduction problems.

(2) When a child has been removed from New York to Canada, the Convention can help secure the child's return provided that the Convention has been ratified by both the United States and by the Canadian province to which the child was taken. An alternative remedy also might lie under Canadian law. If the child had been removed from Canada and taken to the United States, the aggrieved custodial parent in Canada could secure the child's return by petitioning for enforcement of a Canadian custody order pursuant to the UCCJA, by invoking the Convention, or by taking both actions.

(3) Persons other than biological parents, such as grandparents, can invoke the Convention to secure a child's return. Of course, anyone who invokes the Convention must have been exercising custody of the child at the time of the abduction.

(4) Foster parents whose custody rights are violated can invoke the Convention to secure their child's return, even from a biological parent.

(5) John, a fourteen-year-old child, has been living with his mother in Country A since the separation of his mother and father when he was ten years old. John has regularly visited his father in Country B during holidays and vacations. After summer vacation, John's father refuses to return John to the home of his mother.

(a) If Countries A and B are both parties to the Hague Convention, the mother can invoke its provisions either in Country A or B by making application to the appropriate Central Authority of either Country or by applying directly to the courts of Country B.

(b) If application is made by John's mother within one year of the wrongful detention, the courts in Country B are obligated to order John's return to Country A unless one of the special exceptions applies. Under the facts detailed above, Country A is John's country of habitual residence. His mother

---

45. Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3566 (1980) (codified at 28 U.S.C. § 1738A (1982)) [hereinafter PKPA]. The full text of the PKPA is set forth in Appendix C, *infra*.

had rightful custody rights when John was "abducted" by his father.

(c) That father is also a natural parent and that there has never been an adjudication of custody is not relevant to the application of the Convention.

(d) Under Article 13 of the Convention, the courts of Country B need not return John to his mother in Country A if:

(1) there is a risk of harm to John;

(2) the return would place him in an intolerable situation; or

(3) John objects to being returned to his mother, expresses a preference to remain with his father, and because of his age and maturity, his wishes merit consideration.

(e) If mother applies one year from the wrongful detention, the court, within its discretion, may order return and can investigate whether John has become settled or assimilated in Country B.

(f) If mother applies more than two years from the wrongful keeping, and if by this time John has now reached age sixteen, the convention is no longer applicable as a means of enforcing his return.

#### IV. ACTIVITIES OF THE STUDY GROUP

Upon the signing of the Child Abduction Convention by the United States on December 23, 1981, the State Department's Child Abduction Study Group of the Advisory Committee on Private International Law began studying the appropriate procedures for implementation of the Convention. The study group sought to place the Convention in position for transmission to the Senate for advice and consent to United States ratification.<sup>46</sup>

---

46. The implementation of the convention by both federal and state agencies in a uniform manner has been the subject of intensive study during the past five years by the Study Group on Child Abduction established by the Secretary of State's Advisory Committee on Private International Law. Under the guidance and assistance of Peter H. Pfund, Assistant Legal Advisor for Private International Law of the Department of State, members of the Study Group were drawn from all segments of the legal community, Professors Carol S. Bruch (University of California at Davis School of Law), Sanford N. Katz (Boston College Law School), Henry Foster (New York Univ. School of Law, Retired), Herma Hill Kay (University of California School of Law, Boalt Hall), Willis L.J. Reese (Columbia Law School), Rudolph B. Schlesinger (University of California, Hastings College of Law), Linda J. Silberman (University of Pennsylvania Law School), Deputy California Attorney General Gloria DeHart (former national chairman of the International Law Committee of the Family Law Section of the

Of special concern to the Study Group was the method by which cooperation between the federal central authority and the fifty-six separate United States jurisdictions best could be achieved. Also of concern were the special problems peculiar to the United States in particular, the existence and involvement of the state and federal court systems, the absence of identity documents and/or police registration documents common to many Contracting States, and the highly mobile nature of the United States population.

From the outset, there were conflicting views as to whether implementing legislation was necessary or desirable. After full consideration of the views of the Study Group participants, the Advisory Committee recommended that appropriate federal implementing legislation be adopted to ensure that the Convention becomes effective from the start and works as smoothly as possible. The Legal Adviser for Private International Law prepared and transmitted draft federal legislation to the Office of Management and Budget (OMB) on December 26, 1985, for administrative clearance. OMB comments are currently under study by the State Department, the Department of Justice, and the Department of Health and Human Services.<sup>47</sup>

During the several years that the Study Group has been involved with this Convention, considerable attention has been devoted to the question of which federal agency is best suited to carry out the duties required of the Convention mandated Central Authority. As of the most recent meeting, the consensus was in favor of the task being assigned to the Consular Affairs Bureau of the State Department. This agency offers the most desirable framework and staffing to carry out the task, and, as indicated earlier, it is already familiar with the problem.

## **V. THE HISTORICAL LAW APPLICABLE TO CHILD CUSTODY**

The origins of jurisdictional legislation with respect to the custody of children and, as a by-product thereof, the problems of child-snatching between parents, probably can be attributed to the reluctance of the

---

American Bar Association), Patricia H. Hoff, (former Congressional Advisor to the Hague Conference Delegation), and Lawrence H. Stotter (Representative of the American Bar Association and member of the U.S. Delegation to the Fourteenth Session to the Hague Conference).

47. United States Department of State Memorandum from Peter H. Pfund, Asst. Legal Adviser for Private International Law to Members of the Study Group on International Child Abduction of the Secretary of State's Advisory Committee on Private International Law and Organization and Persons Concerned about International Child Abductions (Apr. 4, 1986).



United States Supreme Court to interpret the Full Faith and Credit Clause of the United States Constitution.<sup>48</sup> The Supreme Court, in a series of cases decided between 1947 and 1962, steadfastly refused to resolve the jurisdictional issue on constitutional grounds.<sup>49</sup> The absence of a Supreme Court ruling prevented quick resolution of the problem. For this reason, the lower courts were forced to attempt to balance their traditional role as *parens patriae* and the need to act as protector and guardian of the child.

Apart from the ultimate custody question, courts were faced with difficult jurisdictional issues. Jurisdiction could be based on the child's physical presence, the child's domicile, the physical presence and/or domicile of one or both parents, or the jurisdiction of the court rendering an initial decree. Courts also were faced with the generally recognized concept that decrees concerning children are always subject to modification in their "best interests" and therefore are not final in the sense that other courts must give them full faith and credit in the traditional manner.

In the absence of a clarifying treaty, foreign courts expressed the same concerns as their American counterparts. This problem further frustrated the efforts of parents in the United States whose children were wrongfully taken to or retained in foreign countries.

Because the media frequently reports these cases, the use of self-help by a parent without custody has become increasingly widespread. Michael W. Agopian, an expert on child abduction, described the problem as follows:

In 1978, Americans divorced 1,122,000 times. The rate of divorce has increased steadily, and the 1960 rate of 2.2 divorces per 100,000 population increased in 1970 to 3.5, and in 1978, the rate reached 5.1. The number of children involved in divorce has nearly tripled between 1960 and 1976, increasing from 463,000 to 1,117,000 children. With the number of child stealing cases estimated at between 25,000 and 100,000, this amounts to about one child theft for every twenty-two divorces.<sup>50</sup>

---

48. U.S. CONST. art. IV. § 1 provides: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other State."

49. *Halvey v. Halvey*, 330 U.S. 610 (1947); *May v. Anderson*, 345 U.S. 528 (1953); *Kovacs v. Brewer*, 356 U.S. 604 (1958); *Ford v. Ford*, 371 U.S. 187 (1962). See Ratner, *Child Custody in a Federal System*, 62 MICH. L. REV. 795 (1964); Ehrenzweig, *The Interstate Child and Uniform Legislation: A Plea for Extralittigious Proceedings*, 64 MICH. L. REV. 1 (1965); Ratner, *Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act*, 38 S. CAL. L. REV. 1 (1965).

50. See M. AGOPIAN, *PARENTAL CHILD-STEALING* (1981).

To stem the increased use of child-snatching and other self-help measures, the American Bar Association Section of Family Law and the Commissioners on Uniform State Laws drafted the UCCJA, which, during the sixteen years following its drafting, received gradual but increasing acceptance across the country. The UCCJA, however, did not completely deter parents from forum-shopping with their children when dissatisfied with a particular court ruling. The Act had certain weaknesses, both in its textual content as well as in its application.<sup>51</sup>

A solution to these loopholes was found by resorting to the appropriate federal legislation. This perspective placed into focus the application of the existing federal anti-kidnapping laws. The Federal Kidnapping Act<sup>52</sup> was first signed into law by President Hoover on June 22, 1932.<sup>53</sup> It was amended to make kidnapping a capital crime in 1934.<sup>54</sup> The original act was designed to apply only to interstate kidnapping, that is, the transportation of a person interstate against his or her will, and was applicable only to ransom, reward, or other unlawful purposes. The legislation expressly excluded "kidnapping" of a minor by his parent. The Justice Department interpreted the exclusion of parental child-snatching by Congress as a "hands-off" policy in the area of family litigation, unless the child-snatching was tied to the commission of a felony, if the physical or moral welfare of the child was threatened.<sup>55</sup>

Concerned persons and groups continued to search for additional remedies to curtail child-snatching between parents. Senator Malcolm Wallop of Wyoming advocates amending federal criminal law and procedure to remedy the problem.<sup>56</sup>

At the 1978 annual meeting of the American Bar Association, the

---

51. See Sampson, *What's Wrong with the UCCJA? Punitive Decrees and Hometown Decisions Are Making a Mockery of this Uniform Act*, 3 FAM. L. ADVOC. 28 (1981); S. KATZ, *supra* note 6 (dedicated to the memory of Professor Brigitte M. Bodenheimer, who suddenly died during the period of the book's preparation); see also Bodenheimer, *Progress under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody and Excessive Modification*, 65 CAL. L. REV. 978 (1977); See Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L.J. 1011 (1977); Ratner, *Procedural Due Process and Jurisdiction to Adjudicate: (a) Effective-Litigation Values vs. the Territorial Imperative; (b) The Uniform Child Custody Jurisdiction Act*, 75 NW. U.L. REV. 363 (1980).

52. 18 U.S.C. 1201 (1971).

53. 75 Cong. Rec. 13,296 (1932).

54. Act of May 18, 1934, ch. 301, 48 Stat. 781-82.

55. See Stotter, *The Family Law Section Speaks Out—Parental Child-Stealing Is a National Disgrace*, N.Y.L.J., Aug. 1978 (Annual Meeting Issue); see also Report of Family Law Section to ABA House of Delegates (Recommendation No.3 and Report of August 1986).

56. See Coombs, *The 'Snatched' Child is Halfway Home in Congress*, 11 FAM. L.Q. 407 (1978).

House of Delegates again considered a series of resolutions proposed by its Family Law Section. This time the delegates adopted the following four resolutions:

Be It Resolved, That the American Bar Association encourages the legislatures of the various states which have not yet adopted the Uniform Child Custody Jurisdiction Act to do so at the earliest opportunity.

Be It Resolved, That the American Bar Association urges the Congress of the United States to enact legislation which would require the courts of the states to accord full faith and credit to the child custody and visitation decrees of each state, pursuant to Article IV, Section 1, of the United States Constitution.

Be It Resolved, That the American Bar Association supports the child snatching provisions set forth in S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978.

Be It Resolved, That the American Bar Association urges the United States Congress, in treaties, and the State legislatures, in statutes, to take appropriate measures to provide in extradition treaties and statutes that the removal of a child from a custodial parent, in violation of an existing court decree, to another state or country, be construed as an extraditable act.<sup>57</sup>

Thus, the American Bar, acting through its Association's representatives and delegates, recognized, and went on record as early as 1979, that an international treaty, such as that provided by the Abduction Convention, was an essential element in the total package required to stem the tide of child abductions.

With the support of the ABA, the battle for federal laws on this subject shifted to Congress. On December 5, 1980, in its final days, the 96th Congress passed the PKPA as a rider to the Pneumococcal Vaccine Medical Coverage Act.<sup>58</sup> The new federal legislation was signed into law by President Carter on December 26, 1980.

The new federal Act has three primary provisions: (a) allowing access to the Federal Parent Locator Service, (b) mandating the application of full faith and credit provisions upon the authorities of the individual states, and (c) establishing the policy of applying the benefits of the Fugi-

---

57. See Recommendations and Report of the Section of Family Law to the American Bar Association House of Delegates, and Minutes of the House of Delegates, Annual Meeting, August 1978.

58. PKPA, 28 U.S.C. § 1738A. See generally Walker, *The Parental Kidnapping Prevention Act of 1980*, 3 FAM. ADVOC. 19 (198—); S. KATZ, *supra* note 6, at 121; Child Custody & Visitation Law and Practice, *supra* note 8, § 30.1.

tive Felon Act in states where parental kidnapping is recognized as a felony.<sup>59</sup>

While the problem of child snatching received increased attention in the United States, at both the state and national levels, the problem also received similar attention on the international scene. In 1972, at their Seventh Conference (Basle, 15-18 May, 1972) the European Ministers of Justice examined ways of improving cooperation concerning the guardianship and custody of children. At this time, experts had already generally agreed that the provisions of existing international conventions and the declarations concerned with the protection of human rights and fundamental freedom were an ineffective deterrent to the escalating use of child abduction as a means of forum shopping to obtain a favorable custody award.

Accordingly, the European Ministers of Justice established a committee of governmental experts to implement the resolution. At its first meeting in 1973, the committee of experts gave priority to the need for a draft European convention. In 1976, the experts from Switzerland presented a draft convention that dealt with the restoration of children taken across international frontiers. The committee of experts elected to harmonize the Swiss proposal with the draft European convention. The work was completed by the committee of experts at its meeting from January 29 to February 3, 1979. The draft convention then was submitted to the Committee of Ministers who adopted the text and opened it to signature by member states on May 20, 1980. It generally is referred to as the Strasberg Convention.<sup>60</sup> Although this convention was signed by 15 nations, as of 1982 it had only been ratified by France. It can become effective only three months after three countries ratify it.<sup>61</sup>

---

59. See Hoff, *Federal Court Remedies in Interstate Child Custody and Parental Kidnapping Cases*, 19 FAM. L.Q. 443 (1986).

60. EXPLANATORY REPORT ON THE EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN AND ON RESTORATION OF CUSTODY OF CHILDREN 6 (Council of Europe 1980); *American and International Responses to International Child Abductions*, 16 N.Y.U. J. INT'L & POL. 415, 416 n.2 (1984); Jones, *Council of Europe Convention on Recognition and Enforcement of Decisions Relating to the Custody of Children*, 30 INT'L AND COMP. L.Q. 467, (1981); Note, *Law and Treaty Responses to International Child Abductions*, 20 VA. J. INT'L L. 669, 673 (1980); Crouch, *Effective Measures Against International Child Snatching*, 131 NEW L.J. 592 (1981); Ekelaar, *International Child Abductions by Parents*, 32 U. TORONTO L.J. 281 (1982).

61. Two excellent and informative articles which compare the provisions and application of the Strasberg Convention of 1980 with that of the Child Abduction Convention are: Comment, 10 N.C. J. INT'L L. & COM. REG. 463 (1985); and Frank, *American and International Responses to International Child Abductions*, 16 N.Y.U. J. INT'L L. & POL. 415 (1984). These articles provide a scholarly review of the growth and development of interjurisdictional custody laws, including the UCCJA and the PKPA, and each gives reference to a number of

## VI. THE HAGUE CONFERENCE FAMILY LAW CONVENTIONS

Since its inception in 1893, the Hague Conference, as well as the various national representatives participating in its programs, has demonstrated considerable interest and concern for the need for international treaties pertaining to the protection of children. During its Eighth Session in 1956, the Conference elected to revise its family law conventions which date back to 1902. These revisions include the Hague Convention on the Civil Aspects of International Child Abduction.<sup>62</sup>

The United States did not become an active participant in private international law programs until 1964 when it joined both the Hague Conference on Private International Law<sup>63</sup> and the International Institute for the Unification of Private Law<sup>64</sup> (UNIDROIT) at the urging of the American Bar Association.<sup>65</sup> In 1966, the United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL), which the United States joined at its inception.

Significantly, the United States has been reluctant to commit itself to the international law unification process. Apart from the Hague conventions, the United States has become a member of only one other convention, the 1958 "New York" Convention on the Recognition and Enforcement on Foreign Arbitral Awards.<sup>66</sup> The United States now has a slightly better record arising from its participation in the intergovernmental meetings of the Hague Conventions. As of this date, the United States has become a party to three conventions: the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in

---

illustrative court decisions to which these acts have been applied. Both of these authors strongly endorse the early ratification of the Child Abduction Convention.

62. Lengthy and detailed reviews of the history and content of the various treaties and Conventions having a family law context appear in the *Dyer Report*, *supra* note 21, and in two excellent current articles: Pfund, *United States Participation in International Unification of Private Law*, 19 INT'L LAW. 505 (1985), and Droz & Dyer, *The Hague Conference and the Main Issues of Private International Law for the Eighties*, 3 NW. J. INT'L L. & BUS. 155 (1981).

63. Formulated Oct. 9-31, 1951, 15 U.S.T. 2228; T.I.A.S. No. 5710, 220 U.N.T.S. 121 (entered into force with respect to the U.S. Oct. 15, 1964).

64. Mar. 15, 1940, 5 U.S.T. 2494, T.I.A.S. No. 5743 (entered into force with respect to the U.S. Mar. 13, 1964).

65. See 22 U.S.C. 269(g) (authorizing the President to accept membership in both organizations on behalf of the United States); Kearney, *The United States and International Cooperation to Unify Private Law*, 5 CORNELL INT'L L.J. 1 (1972).

66. Done Jun. 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3 (entered into force with respect to the U.S. Dec. 29, 1970).

Civil or Commercial Matters,<sup>67</sup> the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters,<sup>68</sup> and the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents.<sup>69</sup> Presently pending before the Senate for advice and consent to ratification are three non-Hague-developed conventions.<sup>70</sup>

Attention to family law concerns by the Hague Conference began shortly after its First Session.<sup>71</sup> In 1902, the Hague Conference established a Marriage Convention and a Convention governing the Guardianship of Infants.<sup>72</sup> These, as well as other Conventions of the Conference, were swept away by the events of the World War II. However, since its Eighth Session, ten of the twenty-four Conventions adopted by the Conference have dealt with family law subjects. At the Eighth Session, for example, the Conference adopted two Conventions, one dealing with the law applicable to international child support, and a second dealing with the recognition and enforcement of child support judgments.<sup>73</sup>

During its Ninth Session, the Conference adopted a new Convention on guardianship of minors.<sup>74</sup> At its Tenth Session, the Conference established a Convention covering assumption of jurisdiction and recognition

---

67. *Done* Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 162 (entered into force with respect to the U.S. Feb. 10, 1969).

68. *Opened for signature* Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444, (entered into force with respect to the U.S. Oct. 7, 1972).

69. T.I.A.S. No. 10072; 20 I.L.M. 1405-19 (entered into force with respect to the U.S. Oct. 15, 1981).

70. The 1975 Inter-American Convention on Letters Rogatory and its 1979 Additional Protocol, 9 S. Doc. No. 27, 98th Cong., 2d Sess. (1984), 14 I.L.M. 339-43 (1975) (1975 Convention), 18 I.L.M. 1238-47 (1979) (1979 Addl. Protocol); 1975 Inter-American Convention on International Commercial Arbitration, S. Doc. No. 12, 97th Cong., 1st Sess. — (1981), 14 I.L.M. 336-39 (1975); 1980 United Nations Conference on Contracts for the International Sale of Goods, S. Doc. No. 9, 98th Cong., 1st Sess. 22-43 (1983), 19 I.L.M. 668-99 (1980).

71. At that time its sole official language was French. The Conference adopted English as a second official language in 1964.

72. *See Dyer Report*, *supra* note 21.

73. Convention sur le loi applicable aux obligations alimentaire envers les enfants (1956); Convention concernant la reconnaissance et l'exécution des décisions en matière d'obligations alimentaires envers les enfants (1956), COLLECTION OF CONVENTIONS [1951-1977], *supra* note 32, at 32, 36. These Conventions were complementary to a United Nations Convention enacted that same year. *See* Convention on the Recovery Abroad of Maintenance, June 30, 1956, 268 U.N.T.S. 32; De Hart, *Child Support Enforcement Reaching across International Boundaries*, FAM. ADVOC., Fall 1979, at 26.

74. Convention concernant la compétence des autorités et la loi applicable en matière de protection des mineurs, Oct. 5, 1961, COLLECTION OF CONVENTIONS [1951-1977], *supra* note 32, at 42.

of decrees in adoption cases.<sup>75</sup> At the Eleventh Session, the Conference produced a Convention covering the recognition of divorces and legal separations.<sup>76</sup> At its Twelfth Session, the Conference prepared Conventions on alimony and support obligations<sup>77</sup> and on the recognition and enforcement of decisions concerning such obligations.<sup>78</sup> At its Thirteenth Session, the Conference established a Convention treating the subject of conflicts of laws on marriage,<sup>79</sup> as well as a Convention on the law of matrimonial property.<sup>80</sup> The Child Abduction Convention is the latest in this series of family law subjects to which the Hague Conference has directed its attention.

There are numerous other multilateral and bilateral conventions and treaties that contain provisions bearing upon matters of child custody,<sup>81</sup> including the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948,<sup>82</sup> the American Convention on Human Rights,<sup>83</sup> and the International Covenant on Civil and Political Rights.<sup>84</sup>

## VII. CONCLUSION

Interestingly, the widespread acceptance of the 1980 Hague Child Abduction Convention is influencing trial court decisions in jurisdictions that are not parties to the convention, but which accept the Convention's goals and policies as being rational and persuasive. Recently, the Family Court of Australia at Adelaide in the *Matter of Horaicu*<sup>85</sup> ordered a child returned to Australia in accord with the provisions of Articles 1 and 3 of

---

75. Convention on Jurisdiction, Applicable Law, and Recognition of Decrees Relating to Adoption, Nov. 15, 1965, COLLECTION OF CONVENTIONS [1951-1977], *supra* note 32, at 65.

76. Convention on the Recognition of Divorces and Legal Separations, June 1, 1970, COLLECTION OF CONVENTIONS [1951-1977], *supra* note 32, at 129.

77. Convention on the Law Applicable to Maintenance Obligations, Oct. 2, 1973, COLLECTION OF CONVENTIONS [1951-1977], *supra* note 32, at 219.

78. Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, Oct. 2, 1973, COLLECTION OF CONVENTIONS [1951-1977], *supra* note 32, at 203.

79. Convention on Celebration and Recognition of the Validity of Marriages, Mar. 14, 1978, COLLECTION OF CONVENTIONS [1951-1980], *supra* note 32.

80. Convention on the Law Applicable to Matrimonial Property Regimes, Mar. 14, 1978, *Recueil des Conventions* [1951-1980], *supra* note 32.

81. *See Dyer Report*, *supra* note 21, at 30-32.

82. *See supra* note 31, arts. 16, 25; *see* THE UNITED NATIONS AND HUMAN RIGHTS, U.N. Sales No. E.67.1.29 (1968).

83. *See Special Commission Report*, arts. 17, 18, 19, *supra* note 27.

84. *See* U.N. Doc. No. ST/HR/1, arts. 23, 24 (1983).

85. Appeal No. 185, Australia-Germany, 1985.

the Convention. The Court, in its decision expressed the following sentiments:

Obviously, there is no such obligation in the absence of ratification, but the terms of the Convention strongly support the two conclusions:

- (a) That as a general principle, Courts should act in comity to discourage the abduction of children across national borders; and
- (b) That the forum which has the pre-eminant claim to jurisdiction is the place where the child habitually resided immediately prior to the time when it was removed or retained without the consent of the other parent.<sup>86</sup>

Thus, it seems that the policies established by the Child Abduction Convention are receiving widespread attention and application. However, to achieve its maximum potential, the Convention needs the opportunity to enter into force. Therefore, the United States Congress should enact enabling legislation as soon as possible.

---

86. *Id.* at 8-9.



**Appendix A**

ÉDITION DÉFINITIVE  
FINAL EDITION

CONFÉRENCE DE LA HAYE  
DE DROIT INTERNATIONAL PRIVÉ

HAGUE CONFERENCE  
ON PRIVATE INTERNATIONAL LAW

QUATORZIÈME SESSION  
FOURTEENTH SESSION

ACTE FINAL  
FINAL ACT

(excerpts containing the text of the  
1980 Hague Convention on the Civil  
Aspects of International Child Abduction

and

the recommended form for the Request  
for return)

LA HAYE, LE 25 OCTOBRE 1980  
THE HAGUE, 25th OCTOBER 1980

## Final Act of the Fourteenth Session

---

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, the Arab Republic of Egypt, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Jugoslavia, Luxembourg, the Netherlands, Norway, Portugal, Spain, Surinam, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, and the Representatives of the Government of Brazil, the Holy See, Hungary, Monaco, Morocco, the Union of Soviet Socialist Republics and Uruguay participating by invitation or as Observer, convened at The Hague on the 6th October 1980, at the invitation of the Government of the Netherlands, in the Fourteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments—

A The following draft Conventions—

I

### CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody.

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

#### CHAPTER 1—SCOPE OF THE CONVENTION

##### *Article 1*

The objects of the present Convention are—

*a* to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

*b* to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

##### *Article 2*

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

*Article 3*

The removal or the retention of a child is to be considered wrongful where—

*a* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

*b* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

*Article 4*

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

*Article 5*

For the purposes of this Convention—

*a* 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

*b* 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

## CHAPTER II—CENTRAL AUTHORITIES

*Article 6*

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

*Article 7*

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

*a* to discover the whereabouts of a child who has been wrongfully removed or retained;

*b* to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

*c* to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

*d* to exchange, where desirable, information relating to the social background of the child;

*e* to provide information of a general character as to the law of their State in connection with the application of the Convention;

*f* to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

*g* where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

*h* to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

*i* to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

### CHAPTER III—RETURN OF CHILDREN

#### *Article 8*

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

*a* information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

*b* where available, the date of birth of the child;

*c* the grounds on which the applicant's claim for return of the child is based;

*d* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

*e* an authenticated copy of any relevant decision or agreement;

*f* a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

*g* any other relevant document.

#### *Article 9*

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

#### *Article 10*

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

*Article 11*

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

*Article 12*

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

*Article 13*

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

*a* the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

*b* there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

*Article 14*

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the

specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

#### *Article 15*

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

#### *Article 16*

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

#### *Article 17*

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

#### *Article 18*

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

#### *Article 19*

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

#### *Article 20*

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

### CHAPTER IV—RIGHTS OF ACCESS

#### *Article 21*

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any

conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

## CHAPTER V—GENERAL PROVISIONS

### *Article 22*

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

### *Article 23*

No legalization or similar formality may be required in the context of this Convention.

### *Article 24*

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

### *Article 25*

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

### *Article 26*

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including

travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

#### *Article 27*

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

#### *Article 28*

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

#### *Article 29*

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

#### *Article 30*

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

#### *Article 31*

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

*a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

*b* any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

#### *Article 32*

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

#### *Article 33*

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.



*Article 34*

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

*Article 35*

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

*Article 36*

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restriction to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

## CHAPTER VI—FINAL CLAUSES

*Article 37*

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

*Article 38*

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

*Article 39*

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

*Article 40*

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

*Article 41*

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

*Article 42*

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

*Article 43*

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—

1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2 for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

*Article 44*

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

*Article 45*

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following—

- 1 the signatures and ratifications, acceptances and approvals referred to in Article 37;
- 2 the accessions referred to in Article 38;
- 3 the date on which the Convention enters into force in accordance with Article 43;
- 4 the extensions referred to in Article 39;
- 5 the declarations referred to in Articles 38 and 40;
- 6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
- 7 the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the .... day of ..... 19.., in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

F The following Recommendation concerning the draft Convention on the Civil Aspects of International Child Abduction—

The Fourteenth Session.

Recommends to the States Parties to the *Convention on the Civil Aspects of International Child Abduction* that the following model form be used in making applications for the return of wrongfully removed or retained children—

Request for return

Hague convention of ..... on the Civil Aspects of International Child Abduction

---

REQUESTING CENTRAL AUTHORITY  
OR APPLICANT

---



---

REQUESTED AUTHORITY

---

Concerns the following child ..... who will attain  
the age of 16 on ..... 19.....

NOTE: The following particulars should be completed insofar as possible.

**I — IDENTITY OF THE CHILD AND ITS PARENTS**

**1 Child**

name and first names .....  
date and place of birth .....  
habitual residence before removal or retention .....  
passport or identity card No. if any .....  
description and photo, if possible (see annexes) .....

**2 Parents**

2.1 *mother:* name and first names .....  
date and place of birth .....  
nationality .....  
occupation .....  
habitual residence .....  
passport or identity card No. if any .....

2.2 *Father:* name and first names .....  
date and place of birth .....  
nationality .....  
occupation .....  
habitual residence .....  
passport or identity card No. if any .....

2.3 Date and place of marriage .....

**II — REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody before the removal or retention)**

3 name and first names .....  
nationality of individual applicant .....  
occupation of individual applicant .....  
address .....  
passport or identity card No. if any .....  
relation to the child .....  
name and address of legal adviser, if any .....

**III — PLACE WHERE THE CHILD IS THOUGHT TO BE**

4.1 Information concerning the person alleged to have removed or retained the child  
  
name and first names .....  
date and place of birth, if known .....  
nationality, if known .....  
occupation .....  
last known address .....  
passport or identity card No. if any .....  
description and photo, if possible (see annexes) .....

4.2      Address of the child      .....  
.....  
.....

4.3      Other persons who might be able to supply additional information relating to  
the whereabouts of the child      .....  
.....  
.....  
.....  
.....

IV      — TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL  
REMOVAL OR RETENTION  
  
.....  
.....  
.....  
.....  
.....

V      — FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST  
  
.....  
.....  
.....  
.....  
.....

VI      — CIVIL PROCEEDINGS IN PROGRESS  
  
.....  
.....  
.....  
.....  
.....

VII    — CHILD IS TO BE RETURNED TO  
  
*a*      name and first names      .....  
         date and place of birth      .....  
         address      .....  
         telephone number      .....  
  
*b*      proposed arrangements for return of the child      .....  
.....  
.....  
.....

VIII   — OTHER REMARKS  
  
.....  
.....  
.....  
.....  
.....

IX — LIST OF DOCUMENTS ATTACHED\*

.....  
.....  
.....  
.....  
.....

Date .....

Place .....

Signature and/or stamp of the requesting Central Authority or  
applicant

.....  
.

---

\* *e.g.* Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.

---

## Appendix B

## CIVIL CODE

## TITLE 9. UNIFORM CHILD CUSTODY JURISDICTION ACT

## UNIFORM CHILD CUSTODY JURISDICTION ACT

*Table of Jurisdictions Wherein Act Has Been Adopted*

*For text of Uniform Act, and variation notes and annotation  
materials for adopting jurisdictions, see Uniform Laws Annotated, Master  
Edition, Volume 9.*

Jurisdiction	Statutory Citation
Alabama	Code 1975, §§ 30-3-20 to 30-3-44.
Alaska	AS 25.30.010 to 25.30.910.
Arizona	A.R.S. §§ 8-401 to 8-424.
Arkansas	Ark.Stats. §§ 34-2701 to 34-2725.
California	West's Ann.Cal.Civ.Code §§ 5150 to 5174.
Colorado	C.R.S. 14-13-101 to 14-13-126.
Connecticut	C.G.S.A. §§ 46b-90 to 46b-114.
Delaware	13 Del.C. §§ 1901 to 1925.
District of Columbia	D.C.Code 1981, §§ 16-4501 to 16-4524.
Florida	West's F.S.A. §§ 61.1302 to 61.1348.
Georgia	O.C.G.A. §§ 19-9-40 to 19-9-64.
Hawaii	HRS §§ 583-1 to 583-26.
Idaho	I.C. §§ 32-1101 to 32-1126.
Illinois	S.H.A. ch. 40, ¶¶ 2101 to 2126.
Indiana	West's A.I.C. 31-1-11.6-1 to 31-1-11.6-25.
Iowa	I.C.A. §§ 598A.1 to 598A.25.
Kansas	K.S.A. 38-1301 to 38-1326.
Kentucky	KRS 403.400 to 403.630.
Louisiana	LSA-R.S. 13:1700 to 13:1724.
Maine	19 M.R.S.A. §§ 801 to 825.
Maryland	Code, Family Law, §§ 9-201 to 9-224.
Massachusetts	M.G.L.A. c. 209B, §§ 1 to 14.
Michigan	M.C.L.A. §§ 600.651 to 600.673.
Minnesota	M.S.A. §§ 518A.01 to 518A.25.
Mississippi	Code 1972, §§ 93-23-1 to 93-23-47.
Missouri	V.A.M.S. §§ 452.440 to 452.550.
Montana	MCA 40-7-101 to 40-7-125.
Nebraska	R.R.S.1943, §§ 43-1201 to 43-1225.
Nevada	N.R.S. 125A.010 to 125A.250.
New Hampshire	RSA 458-A:1 to 458-A:25.
New Jersey	N.J.S.A. 2A:34-28 to 2A:34-52.
New Mexico	NMSA 1978, §§ 40-10-1 to 40-10-24.
New York	McKinney's Domestic Relations Law, §§ 75-a to 75-z.
North Carolina	G.S. §§ 50A-1 to 50A-25.
North Dakota	NDCC 14-14-01 to 14-14-26.
Ohio	R.C. §§ 3109.21 to 3109.37.
Oklahoma	10 Okl.St.Ann. §§ 1601 to 1628.
Oregon	ORS 109.700 to 109.930.
Pennsylvania	42 Pa.C.S.A. §§ 5341 to 5366.
Rhode Island	Gen.Laws 1956, §§ 15-14-1 to 15-14-26.
South Carolina	Code 1976, §§ 20-7-782 to 20-7-830.

## Appendix B continued

Jurisdiction	Statutory Citation
South Dakota .....	SDCL 26-5A-1 to 26-5A-26.
Tennessee .....	T.C.A. 36-6-201 to 36-6-225.
Texas .....	V.T.C.A. Family Code §§ 11.51 to 11.75.
Utah .....	U.C.A.1953, §§ 78-45c-1 to 78-45c-26.
Vermont .....	15 V.S.A. §§ 1031 to 1051.
Virginia .....	Code 1950, §§ 20-125 to 20-146.
Washington .....	West's RCWA 26.27.010 to 26.27.910.
West Virginia .....	Code, 48-10-1 to 48-10-26.
Wisconsin .....	W.S.A. 822.01 to 822.25.
Wyoming .....	W.S.1977, §§ 20-5-101 to 20-5-125.



## Appendix C

### Parental Kidnapping Prevention Act of 1980\*

SEC 6. Sections 6 to 10 of this Act may be cited as the "Parental Kidnapping Prevention Act of 1980."

#### Findings and Purposes

SEC 7.(a) The Congress finds that—

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, and often inconsistent and conflicting;

(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

(c) The general purposes of sections 6 to 10 of this Act are to

(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

(3) facilitate the enforcement of custody and visitation decrees of sister States;

(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

---

\* Pub. L. No. 96-611 §§ 6-10, 94 Stat. 3568 (Parental Kidnapping Prevention Act of 1980) amends Title XVIII of the Social Security Act to provide for medical coverage of pneumococcal vaccine and its administration.

(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.

## Full Faith and Credit Given to Child Custody Determinations

SEC. 8.(a) Chapter 115 of title 28, United States Code, is amended by adding immediately after section 1738 the following new section:

“§ 1738A. Full faith and credit given to child custody determinations.

“(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (1) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

“(b) As used in this section, the term—

“(1) ‘child’ means a person under the age of eighteen;

“(2) ‘contestant’ means a person, including a parent, who claims a right to custody or visitation of a child;

“(3) ‘custody determination’ means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

“(4) ‘home State’ means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

“(5) ‘modification’ and ‘modify’ refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

“(6) ‘person acting as a parent’ means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

“(7) ‘physical custody’ means actual possession and control of a child; and

“(8) ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

“(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

“(1) such court has jurisdiction under the law of such State; and

“(2) one of the following conditions is met:

“(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

“(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;

“(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

"(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

"(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

"(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

"(1) it has jurisdiction to make such a child custody determination; and

"(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

"(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination."

(b) The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738 the following new item:

"1738A. Full faith and credit given to child custody determinations."

(c) In furtherance of the purposes of Section 1738A of title 28, United States Code, as added by subsection (a) of this section. State courts are encouraged to h—

(1) afford priority to proceedings for custody determinations; and

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in which—

(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

(B) the court determines it is appropriate.

### *Use of Federal Parent Locator Service in Connection with the Enforcement or Determination of Child Custody and in Cases of Parental Kidnapping of a Child*

SEC. 9.(a) Section 454 of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (15),

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof ";and"; and

(3) by inserting after paragraph (16) the following new paragraph:

"(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453, to accept and transmit to the Secretary requests for information au-

thorized under the provisions of the agreement to be furnished by such Service to authorized persons, and to impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, to transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect, otherwise to comply with such agreement and regulations of the Secretary with respect thereto."

(b) Part D of Title IV of the Social Security Act is amended by adding at the end thereof the following new section:

*"Use of Federal Parent Locator Service in Connection with the Enforcement or Determination of Child Custody and in Cases of Parental Kidnapping of a Child*

"SEC. 463.(a) The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 453 shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

"(b) An agreement entered into under this section shall provide that the State agency described in section 454 will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

"(c) Information authorized to be provided by the Secretary under this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 453, and a request for information by the Secretary under this section shall be considered to be a request for information under section 453 which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section.

"(d) For purposes of this section—

"(1) the term 'custody determination' means a judgment, decree, or other order of a court providing for this custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

"(2) the term 'authorized person' means—

"(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

"(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

"(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child."

(c) Section 455(a) of such Act is amended by adding after paragraph (3) the following: "except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463."

(d) No agreement entered into under section 463 of the Social Security Act shall

become effective before the date on which section 1738A of title 28, United States Code (as added by this title) becomes effective.

### *Parental Kidnapping*

SEC. 10. (a) In view of the findings of the Congress and the purposes of sections 6 to 10 of this Act set forth in section 302, the Congress hereby expressly declares its intent that section 1073 of title 18, United States Code, apply to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable State felony statutes.

(b) The Attorney General of the United States, not later than 120 days after the date of the enactment of this section (and once every 6 months during the 3-year period following such 120-day period), shall submit a report to the Congress with respect to steps taken to comply with the intent of the Congress set forth in subsection (a). Each such report shall include—

- (1) data relating to the number of applications for complaints under section 1073 of title 18, United States Code, in cases involving parental kidnapping;
- (2) data relating to the number of complaints issued in such cases; and
- (3) such other information as may assist in describing the activities of the Department of Justice in conformance with such intent.

\* \* \*